

REMARKS

Claims 1 to 19 are now pending.

Reconsideration is respectfully requested based on the following.

In paragraph seventeen (17) of the Final Office Action, claims 1 to 19 were rejected under 25 U.S.C. 102(b) as anticipated by the Wasilewski reference.

As regards the anticipation rejections of the claims, to reject a claim under 35 U.S.C. § 102, the Office must demonstrate that each and every claim feature is identically described or contained in a single prior art reference. (*See Scripps Clinic & Research Foundation v. Genentech, Inc.*, 18 U.S.P.Q.2d 1001, 1010 (Fed. Cir. 1991)). As explained herein, it is respectfully submitted that the Office Actions to date do not meet this standard, for example, as to all of the features of the claims. Still further, not only must each of the claim features be identically described, an anticipatory reference must also enable a person having ordinary skill in the art to practice the claimed subject matter. (*See Akzo, N.V. v. U.S.I.T.C.*, 1 U.S.P.Q.2d 1241, 1245 (Fed. Cir. 1986)).

As further regards the anticipation rejections, to the extent that the Final Office Action may be relying on the inherency doctrine, it is respectfully submitted that to rely on inherency, the Examiner must provide a "basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristics *necessarily* flows from the teachings of the applied art." (*See M.P.E.P.* § 2112; emphasis in original; and *see Ex parte Levy*, 17 U.S.P.Q.2d 1461, 1464 (Bd. Pat. App. & Int'f. 1990)). Thus, the M.P.E.P. and the case law make clear that simply because a certain result or characteristic may occur in the prior art does not establish the inherency of that result or characteristic.

As to claim 1, it is respectfully submitted that the Wasilewski reference does not identically disclose (or suggest) the feature in which "no allocation between input and output data occurs", as provided for in the context of the claimed subject matter. The Office Action cites Wasilewski, col. 6, ll. 16-55, but this text only refers to using preferably a symmetric cipher, such as the DES algorithm. At no point does the Wasilewski reference introduce a new way of encrypting data, since it only pertains to a more large-scale system for encrypting cable service to cable consumers. As such, the Wasilewski reference does not identically disclose the particular low-level encryption mechanisms that are used. The output stream is allocated byte-wise in relation to the input stream. If it is not, that is because the complete stream has not been encrypted, so that some easily reversible re-ordering between encrypted and non-encrypted data portions has occurred in producing output data from input data. In

any case, the references do not identically disclose (or suggest) the above-discussed features of the claimed subject matter, so that claim 1 is allowable, as are its dependent claims.

Claims 7 and 11 include features like those of claim 1 and are therefore allowable for the same reasons, as are their respective base claims.

While the rejections may not be agreed with, to facilitate matters, claims 1 and 7 have been rewritten to provided the following:

*successive bytes during encryption are provided with an index i, where i = 0, 1, 2, ... ,
 an encrypted byte n* is formed from an unencrypted byte n according to the following, a starting value n₋₁ being used for decryption and encryption:*

$$n_{-1} \equiv S_0$$

$$n_i^* = \left(n_i \lll \sum_{j=0}^i n_{j-1}^* \right) \oplus S_{h\left(\sum_{j=0}^i n_{j-1}^*\right)}$$

an unencrypted byte n is formed from an encrypted byte n according to the following:*

$$n_i = \left(n_i^* \oplus S_{h\left(\sum_{j=0}^i n_{j-1}^*\right)} \right) \ggg \sum_{j=0}^i n_{j-1}^*$$

The foregoing features are not identically disclosed (or suggested) by the reference as applied, so that claims 1 and 7 are allowable, as are their respective dependent claims.

It is therefore respectfully submitted that claims 1 to 19 are allowable.

Conclusion

In view of the foregoing, it is believed that the rejections (and any objections) have been obviated, and that claims 1 to 19 are allowable. It is therefore respectfully requested that the objections and rejections be withdrawn, and that the present application issue as early as possible.

Respectfully submitted,
KENYON & KENYON LLP

Dated: 7/17/2007

By: Gerard A. Messina
(Reg. No. 35,952)

One Broadway
New York, New York 10004
(212) 425-7200

1378317

CUSTOMER NO. 26646